authority upholding the Bulk Sales Act. The court in the principal case admitted that under the holdings of their previous decisions the Act in question would be unconstitutional, as placing an unwarranted restriction upon the right of the individual to acquire and possess personalty and as discriminatory in violation of the first article of the state constitution. The court based its decision on the recent amendment to Article 13 of the constitution. This amendment was to the effect that laws regulating the sale and conveyance of personal property might be passed. The court referred to the fact that the convention had these previous decisions of theirs in mind when drafting the amendment, and that the purpose it evidently intended to accomplish was to unfetter the legislature by meeting the conditions declared by these cases to exist. The court held that the amendment was not merely declarative of powers which the legislature already had, but amended Article 1 in such a way as to admit of bulk sales legislation that formerly would have been unconstitutional. The court evidently took this amendment as a criticism of the Ohio position, and gave it effect by changing the constitution by implication, thereby placing the state in line with the general trend of modern decisions. For an extensive discussion of this subject, see L. R. A. 1915E, 917-922.

SALE—RESCISSION OF EXECUTED CONTRACT FOR BREACH OF WARRANTY.—Plaintiff sold defendant a horn guaranteed to be perfect in tone and workmanship. Defendant claimed the horn was not correct in tone owing to a defective valve, and refused to pay the balance due, but kept the horn. *Held,* plaintiff could recover the actual value of the horn. But the court said that the defendant could have, within a reasonable time after discovering the defect, returned the horn and sued for the amount paid down. *Jenkin's Sons Music Co.* v. *Kindle* (Mo. App. 1915), 180 S. W. 557.

Defendant sold plaintiff certain tiling, hoops, frames, etc., for a silo, to be constructed by plaintiff, which was guaranteed not to bulge or crack. It was properly constructed, and soon after it was filled cracked up to a height of fifteen feet. Plaintiff tendered the silo to the defendant and sued to recover the notes that he had given in payment. *Held,* that in the absence of fraud or an agreement, the plaintiff could not rescind. *Texas-Kalamazoo Silo Co.* v. *Alley* (Tex. Civ. App. 1915), 180 S. W. 621.

The rule of the Missouri case is what is known as the Massachusetts rule, established by the cases of *Bradford* v. *Manly,* 13 Mass. 139, and *Perley* v. *Balch,* 23 Pick. 283, and allows rescission for breach of warranty in an executed contract of sale; the Texas case seems to follow the so-called English rule, established by *Street* v. *Blay,* 2 B. & Ad. 456, and *Dawson* v. *Collis,* 10 C. B. 523, which allows a rescission only on breach of condition. Under the Massachusetts rule it is immaterial whether the breach amounts to a failure of a condition precedent or only to a breach of warranty, but under the English rule it is very material whether the breach amounts to a failure of a condition precedent or not, and had the Texas court looked to see whether it amounted to such the result might have been different. For an extensive review of the authorities on this subject, see the note to *Gay Oil Co.* v. *Roach* (Ark.), 27 L. R. A. (N. S.) 914, and 35 CYC. 434.